

PLANNING COMMISSION MINUTES

April 19, 2000

CALL TO ORDER:

Chairman Dan Maks called the meeting to order at 6:30 p.m. in the Beaverton City Hall Council Chambers at 4755 SW Griffith Drive.

ROLL CALL:

Present were Chairman Dan Maks, Planning Commissioners Betty Bode, Chuck Heckman, Sharon Dunham, Vlad Voytilla, Tom Wolch and Eric Johansen and Alternate Planning Commissioner Bob Barnard.

Development Services Director Irish Bunnell, Principal Planner Hal Bergsma, Assistant City Attorney Ted Naemura and Recording Secretary Sandra Pearson represented staff.

The work session was called to order by Chairman Maks, who presented the format for the work session.

WORK SESSION:

Development Services Director Irish Bunnell described a conditional use as a use that should be allowed, but is conditioned for some reason, such as a use other than a residence in a residential neighborhood.

Chairman Maks mentioned that a conditional use is a quasi-judicial decision.

Commissioner Heckman emphasized that once a Conditional Use Permit application has been filed, Commissioners can legally discuss the issue with members of the staff, but not fellow commissioners or members of the public.

Chairman Maks observed that each zone has different conditional uses.

Mr. Bunnell discussed R-7 residential districts, which generally have 7,000 square foot lots, noting that conditional uses may include commercial eating and drinking establishments, restaurants and bars, educational facilities and recreational facilities.

1 Chairman Maks explained that while it makes sense to locate several restaurants in an
2 office/commercial zone, 20 restaurants in this area would be undesirable, adding that no
3 drive-ins and fewer restaurants will present additional traffic from outside the intended
4 service area. He mentioned that the purpose of this conditional use is to enhance the
5 existing zone in a way that is complimentary to the primary use.

6
7 On question, Mr. Bunnell informed Commissioner Barnard that the Conditional Use
8 Permit runs with the land, with the same type of business and including the same
9 conditions.

10
11 Assistant City Attorney Naemura stated that the "hallmark" of a Conditional Use Permit
12 is discretion. For example, in a 24-hour-per-day operation, the decision is discretionary,
13 and the use is reasonably compatible with the surrounding area or it includes a fairly
14 loose set of standards that address any adverse effects.

15
16 Commissioner Bode referred to a recent Public Hearing regarding an application by Jack
17 in the Box Restaurant, questioning whether it is mandated that Planning Commissioners
18 review each item in great detail or whether this practice is for public record. Chairman
19 Maks informed her that this has been the procedure for as long as he has served on the
20 Planning Commission, although Commissioner Heckman pointed out that this was not
21 the case ten years ago. Chairman Maks observed that people appreciate understanding
22 why a Commissioner voted a certain way, whether it is in their favor or not, adding that
23 this also provides a valuable record if a decision is appealed and results in a finding, as
24 with recent issues involving a park and signs. Chairman Maks noted that this procedure
25 also helps Commissioners to stay focused, emphasizing that if a vote is not based upon
26 relevant criteria, the situation could result in an appeal. Mr. Naemura mentioned that this
27 procedure also provides the benefit of a group thinking process, hopefully eliminating the
28 potential of proceeding under poor rationale. Commissioner Heckman expressed his
29 opinion that it is not advisable to leave the public wondering why you voted a certain
30 way. Principal Planner Hal Bergsma mentioned that staff have prepared findings and a
31 recommendation, and a Commissioner always has the option to express support of
32 findings in a staff report explaining a decision.

33
34 Commissioner Bode mentioned the situation of a split vote, and Chairman Maks
35 informed her that at this point, he conducts a roll call vote, for recording purposes.

36
37 Commissioner Bode questioned the practice of the most junior member of the
38 Commission casting the first vote in a roll call vote, and Mr. Naemura informed her that
39 while there is no actual protocol for this, the rationale is that a junior member may not be
40 unduly influenced and the senior members receive the benefit of their opinion.

41
42 Alternate Commissioner Barnard questioned whether as a new member of the Planning
43 Commission, he should abstain from voting on issues from past meetings, and Chairman
44 Maks informed him that this is not necessarily a good idea. Mr. Naemura stated that
45 Alternate Commissioner Barnard should review the record and determine whether he
46 feels comfortable participating on each individual issue.

1
2 Alternate Commissioner Barnard questioned the availability of a dictionary to help
3 provide an understanding terms that are specific to the Planning Commission, and
4 Commissioner Heckman suggested that he refer to the back of the code book. Observing
5 that he had been involved in land use for a long time in several jurisdictions, Chairman
6 Maks offered to provide Alternate Commissioner Barnard with the titles of two books
7 that might provide the assistance he is requesting.
8

9 7:06 p.m. – Commissioners Voytilla and Wolch appeared.
10

11 On question, Commissioner Maks assured Alternate Commissioner Barnard that the
12 Planning Commission is not currently dealing with any applications in which he would
13 be in the position of having to abstain.
14

15 7:10 p.m. -- the Public Hearing was called to order by Chairman Maks, who presented the
16 format for the hearing.
17

18 **NEW BUSINESS:**
19

20 **PUBLIC HEARING:**
21

22 Chairman Maks opened the Public Hearing and read the format for Public
23 Hearings. There were no disqualifications of the Planning Commission members.
24 No one in the audience challenged the right of any Commissioner to hear any of
25 the agenda items, to participate in the hearing or requested that the hearing be
26 postponed to a later date. He asked if there were any ex parte contact, conflict of
27 interest or disqualifications in any of the hearings on the agenda. There was no
28 response
29

30 The following land use application has been submitted for an approximately
31 109,300 square foot commercial building and a 14,700 square foot garden center
32 on approximately 7.23 acres of land located at 5150 SW Western Avenue. The
33 development proposal is located on Assessor's Map 1S1-14CB on Tax Lot's 1000
34 and 1100, and is zoned Campus Industrial (CI) within a Development Control
35 Area (DCA) overlay district. The applications will be reviewed in accordance
36 with the criteria for approval and Development Code standards in effect on the
37 date of application.
38

39 **A. CUP 99-00032 – HOME DEPOT**
40

41 The applicant requests approval of a Conditional Use Permit (CUP) in order to
42 exceed the 15,000 square foot retail building limitation of the CI zone. The
43 applicant proposes a building size of approximately 109,300 square feet with a
44 14,700 square foot garden center.

1 Observing that the applicant had waived the 120-day requirement, Chairman
2 Maks reported that they had also requested that this Public Hearing be continued
3 until July 12, 2000.

4
5 Commissioner Heckman **MOVED** and Commissioner Wolch **SECONDED** a
6 motion to continue the Public Hearing for CUP 99-00032 – Home Depot, until a
7 date certain of July 12, 2000.

8
9 Motion **CARRIED** unanimously.

10
11 **MISCELLANEOUS BUSINESS:**

12
13 Observing that this is Commissioner Wolch's last meeting with the Planning
14 Commission, Chairman Maks presented a certificate of recognition and appreciation to
15 Commissioner Wolch.

16
17 In recognition of his long hours serving on the Planning Commission, Commissioner
18 Heckman presented Commissioner Wolch with his very own tommy-tippy cup.

19
20 Commissioner Maks stated that it had been a pleasure working with Commissioner
21 Wolch, adding that he had always remained focused on the issue at hand and provided
22 insight other Commissioners had not considered.

23
24 Commissioner Heckman emphasized that he will miss Commissioner Wolch's expertise
25 concerning traffic issues.

26
27 Commissioner Wolch commented that he had enjoyed serving on the Planning
28 Commission, and while he hopes that he has left the City of Beaverton with a much better
29 traffic impact ordinance, he feels that he has also personally benefited from his
30 experience. On question, he informed Chairman Maks that he has served in this capacity
31 for nearly five years.

32
33 Chairman Maks assured Commissioner Wolch that his efforts had been greatly
34 appreciated.

35
36 The Public Hearing adjourned at 7:13 p.m.

37
38 **WORK SESSION:**

39
40 Commissioner Voytilla expressed his opinion that the City of Beaverton should not make
41 obtaining a Conditional Use Permit so easy.

42
43 Mr. Bunnell described a quasi-judicial decision as dealing with an application that
44 generally involves one or two pieces of contiguous property, while a legislative decision
45 involves a very broad area zone district or text change.

46

1 Mr. Naemura distributed handouts that he had prepared regarding the topics of this work
2 session, and mentioned the “touchstones” of distinguishing between quasi-judicial and
3 legislative. He noted that a Conditional Use Permit involves a great deal of discretion in
4 a use that should be permitted but requires some evaluation. He discussed a recently
5 imposed citywide cap on parking standards, adding that because of these standards, there
6 is a cap on nearly every use.

7
8 Commissioner Heckman clarified a quasi-judicial decision as affecting only a small piece
9 of property, rather than the entire city.

10
11 Chairman Maks observed that the City of Beaverton mostly initiates legislative issues,
12 with a few applications from individuals. Mr. Naemura pointed out that not all cities
13 permit individuals to file applications for text amendments. Mr. Bunnell observed that
14 there are not many of these applications from individuals, and Mr. Bergsma pointed out
15 that Washington County does not allow individuals to submit applications for text
16 amendments.

17
18 Chairman Maks noted that an individual applicant or a developer originates most
19 applications dealing with quasi-judicial issues.

20
21 Mr. Naemura discussed ex parte contact, mentioning the possibility of receiving
22 information improperly, noting that an applicant has the right to the expectation that you
23 will deal with their application impartially. He described the statute that applies to this
24 process, emphasizing that as soon as a Commissioner is aware that contact is being made
25 regarding an application, it is his or her responsibility to end this contact immediately.
26 He emphasized that because the applicant is entitled to an impartial hearing, it is
27 necessary to avoid any ex parte contact. Mr. Bunnell noted that any information not
28 entered into the public record could be considered ex parte contact, and Chairman Maks
29 pointed out that all Commissioners must have access to the same information. Mr.
30 Naemura clarified that city staff and legal counsel are not considered ex parte contacts.

31
32 Commissioner Bode described a situation where a Commissioner might be personally
33 involved with an applicant, and Chairman Maks informed her that while this is not
34 considered ex parte contact, it does lead to bias, which is another problem.

35
36 Mr. Naemura explained while all Commissioners may obtain personal information during
37 a site visit, it is possible to rebut this information and avoid the issue of conflict of
38 interest.

39
40 On question, Chairman Maks informed Commissioner Barnard that at the beginning of
41 every Public Hearing he would offer the opportunity for all Commissioners to disclose
42 any ex parte contact. He emphasized that it is better to err on the safe side, adding that if
43 there is any question, it should be disclosed.

44
45 Mr. Naemura pointed out that compared to judges, the threshold of bias is actual bias, not
46 the appearance of impropriety, a lower standard for Commissioners.

1
2 Mr. Naemura observed that for legislative matters, the more contact a Commissioner has,
3 the more information he or she has, which serves the legislative function of choosing
4 from among several policy choices.

5
6 Mr. Bunnell emphasized that if a Commissioner feels that there may be bias or a conflict
7 of interest, it is his or her responsibility to abstain from participating on that particular
8 issue. Mr. Naemura agreed that integrity could be preserved if a member decides to
9 recuse himself.

10
11 Commissioner Heckman suggested that if a Commissioner disqualifies himself on an
12 issue, it is advisable to actually leave the platform, and Commissioner Dunham observed
13 that a disqualified Commissioner could sit in the audience. Mr. Naemura pointed out that
14 a disqualified Commissioner also has the option of filling out a yellow card and
15 participating as a member of the audience.

16
17 On question, Mr. Naemura informed Commissioner Wolch that if an offended party does
18 not raise the bias issue during the judicial hearing, they are actually waiving that right.

19
20 Commissioner Heckman discussed a situation in which the Planning Commission does
21 not take the action anticipated by the applicant and whether that can be considered an
22 issue of appeal, and Mr. Naemura discussed a de novo hearing, in which individuals
23 provide new evidence, adding that this hearing is at the discretion of the City Council and
24 is open to all evidence.

25
26 Mr. Bunnell explained that while all decisions of the Planning Commission appear on the
27 Council Consent Agenda and they are generally approved, the Council may decide to pull
28 a certain item and conduct their own public hearing. Chairman Maks clarified that this
29 involves a new hearing and may include new evidence, consultants and information the
30 Planning Commission never received.

31
32 Mr. Bunnell stated that state laws require that many types of land use decisions be made
33 within 120 days, or an applicant may file a writ of mandamus, adding that if this decision
34 is not made in a timely manner, it is out of our hands and the judge signs the land use
35 permit and conditions of approval. Chairman Maks emphasized that this 120 days
36 applies to time for the entire jurisdiction, not only the Planning Commission. Mr.
37 Bunnell observed that the applicant sometimes requests a continuance, at which time they
38 waive the 120-day requirement.

39
40 Chairman Maks clarified that the 120-day period starts from the time when the
41 application is deemed complete, noting that "The Hoop" had been approved through a
42 writ of mandamus.

43
44 Mr. Bunnell stressed that the directive from Mayor Drake is not to fail to meet the 120-
45 day requirement.

46

1 Commissioner Barnard mentioned last week's meeting, observing that some issues were
2 heard after 10:00 p.m., adding that he understood that there is a rule regarding after 10:00
3 p.m. and wondered if that could effect the City's ability to meet the 120-day requirement.
4 Chairman Maks noted that the Planning Commission is careful to be certain that only
5 legislative issues get postponed in this manner.

6
7 Mr. Bunnell mentioned that the staff reports also provide the information so those
8 Commissioners are aware of what day they are on in regard to the 120-day requirement.
9 Mr. Bergsma clarified that the final hearing has to be conducted within the 120 days, not
10 the entire process.

11
12 Chairman Maks emphasized that land use is not always cut and dried, does not always fit
13 into specific dictionary definitions, and that one can never have all the answers.

14
15 On question, Mr. Naemura informed Chairman Maks that a member of the Planning
16 Commission is personally safe from a lawsuit in the performance of Commissioner's
17 duties.

18
19 7:52 p.m. – Commissioner Wolch was excused.

20
21 Mr. Naemura observed that the Land Use Board of Appeals does not provide for financial
22 claims, adding that under the Tort Claims Act, Commissioners are entitled to
23 indemnification and would be defended. He added that while any wrongful neglect of
24 duty may not receive indemnification or defense, it is more likely that one would be sued
25 in an official, rather than personal, capacity.

26
27 Commissioner Heckman discussed public disclosure, pointing out that in the past,
28 everything had been considered public information. Chairman Maks informed
29 Commissioner Barnard that he would receive this disclosure form, although most of it
30 will not be applicable to his particular situation.

31
32 Chairman Maks assured Commissioner Barnard that while some of his questions may be
33 answered by a dictionary, he will also have available to him a wealth of knowledge from
34 the staff. Commissioner Maks suggested that Commissioners call & talk to staff when
35 necessary, adding that they are helpful, have a wealth of knowledge and will explain.

36
37 Observing that the situation is somewhat easier for members of the Planning Commission
38 than some other government officials, Chairman Maks clarified that while he has many
39 friends who are planners, they are extremely careful of the "appearance" of discussing an
40 issue. He urged that all members of the Planning Commission be careful of propriety,
41 stressing that they are not supposed to discuss anything except for legislative issues
42 amongst themselves unless in their official capacity.

43
44 Commissioner Heckman advised that while an applicant may have been a neighbor for 20
45 years, to a member of the Planning Commission, he is not addressed by his given name,
46 but as Mr. _____.

1
2 On question, Chairman Maks informed Commissioner Barnard that he should bring his
3 information packets to each meeting, and Mr. Bunnell added that these packets are
4 printed and in the mail or delivered at least seven days prior to each meeting.
5 Commissioner Dunham suggested that in the event of a controversial issue, it is advisable
6 to get ideas and comments together on paper prior to the meeting, and Chairman Maks
7 clarified that issues should be written down, relatively coherent and based upon relevant
8 criteria, adding that Commissioners should come prepared with questions. Commissioner
9 Heckman emphasized that Commissioners should not wait to arrive at the meeting to
10 review their materials, and Chairman Maks pointed out that he reviews his information at
11 least twice. Commissioner Dunham suggested that minutes and staff reports be saved,
12 adding that sometimes old issues return to haunt you.

13
14 Chairman Maks observed that it is necessary to have a basis for any findings, adding that
15 staff should be notified ahead of time if you don't agree with their determination so they
16 can respond intelligently. Commissioner Heckman suggested writing out any conditions
17 so they can be reasonably and clearly understood.

18
19 Chairman Maks discussed his procedure for determining the consensus of the
20 Commissioners, pointing out that too many motions and amendments result in a bad land
21 use permit.

22
23 Mr. Bunnell explained the Facilities Review process, which provides the opportunity for
24 comment from the Police Department, Fire Department, Operations, School District, Park
25 District and anyone with an interest in the project. He noted that this committee meets on
26 every project and develops conditions of approval based upon the impacts of the project.
27 Commissioner Dunham pointed out that this generally involves a five-week process.

28
29 Mr. Bunnell reported that every week, the Facilities Review Committee works from a
30 two-sided agenda document including different applications on every line, indicating
31 where each application stands in the process. On question, Mr. Bunnell informed
32 Commissioner Dunham that staff contact with NAC representatives is permissible at all
33 times.

34
35 Mr. Bunnell mentioned PUD's, noting that this makes it possible to construct attached
36 housing in a detached family zone.

37
38 Chairman Maks advised that any Commissioners unable to attend a meeting should
39 contact him, as well as Robyn Lampa in the Development Services Division, adding that
40 she is also able to respond to many questions or provide necessary information.

41
42 Commissioners Barnard and Voytilla indicated that they will not be in attendance at next
43 week's meeting, and Commissioner Dunham noted that only one member is necessary to
44 continue a hearing.

45

Mr. Naemura provided new Commissioners with copies of the by-laws for the Planning Commission.

On question, Mr. Bunnell informed Commissioner Barnard that different types of applications are assigned different types of numbers, such as CUP for Conditional Use Permit, SV for Street Vacation, BDR for Board of Design Review and PDI for Planning Director's Interpretation, and the numbers are consecutive only within a given permit type.

Commissioner Voytilla expressed his concern with town centers, specifically what was perceived, what is the intent and what the result is. He referred to the Grammor proposal, noting that while he has a hard time seeing this as a town center, it meets the criteria, although the appearance is that of another strip center with many loopholes. In defense of the staff, Chairman Maks pointed out that this particular code language had been against their wishes.

The meeting adjourned at 8:40 p.m.

CALENDAR:

May	17	7:00 p.m.	Public Hearing	CUP 2000-0001	BEARD COURT CUP
			Public Hearing	TPP 2000-0001	BEARD COURT TPP
			Public Hearing	RZ 2000-0001	BEARD COURT REZONE
			Public Hearing	RZ 2000-0002	SEXTON MT VILLAGE/ HAGGEN'S STORE
			Public Hearing	RZ 2000-0003	SEXTON PLACE TOWNHOMES
			Public Hearing	CUP 2000-0002	HAGGEN'S STORE 24-HOUR OPERATION
			Public Hearing	CUP 2000-0003	SEXTON MTN VILLAGE PUD
			Public Hearing	SV 2000-0001	SW 166 TH AVENUE STREET VACATION
		7:00 p.m.	Public Hearing	RZ 99-00020	CORNELL ROAD REZONE
		7:00 p.m.	Public Hearing	CPA 99-00005	LOCAL WETLAND INVENTORY
				CPA 99-00006	
	18	7:00 p.m.	Public Hearing	CUP 2000-0001	BEARD COURT CUP
			Public Hearing	TPP 2000-0001	BEARD COURT TPP
			Public Hearing	RZ 2000-0001	BEARD COURT REZONE
			Public Hearing	RZ 2000-0002	SEXTON MT VILLAGE/ HAGGEN'S STORE
			Public Hearing	RZ 0000-0003	SEXTON PLACE TOWNHOMES
			Public Hearing	CUP 2000-0002	HAGGEN'S STORE 24-HOUR OPERATION
			Public Hearing	CUP 2000-0003	SEXTON MTN VILLAGE PUD
	31	7:00 p.m.	Public Hearing	CPA 99-00025	COMPREHENSIVE LAND USE
June	14	7:00 p.m.	Public Hearing	TA 2000-0004	TITLE 4 IMPLEMENTATION TEXT AMENDMENT (cont. from April 12, 2000)
July	12	7:00 p.m.	Public Hearing	CUP 99-00032	HOME DEPOT (cont. from April 19, 2000)